STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-320-E

In the Matter of:	)	
	)	
	)	SUPPLEMENTAL COMMENTS OF
Petition for Approval of Green	)	SOUTH CAROLINA COASTAL
Source Advantage Programs and	)	CONSERVATION LEAGUE AND
Riders GSA	)	SOUTHERN ALLIANCE FOR CLEAN
	)	ENERGY
	)	
	)	

The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") (collectively, "Conservation Groups") file the following Supplemental Comments in this proceeding, pursuant to the South Carolina Public Service Commission's ("Commission") April 17, 2019 Order No. 2019-264 and April 19 Order No. 2019-56-H.

The Conservation Groups previously filed comments on January 7, 2019 responding to Duke Energy Progress, LLC's ("DEP") and Duke Energy Carolinas, LLC's ("DEC") (collectively, "Duke Energy" or "the Companies") proposed Green Source Advantage program ("GSA Program") filed by the Companies on October 10, 2018. The South Carolina Office of Regulatory Staff ("ORS") and the South Carolina Solar Business Alliance ("SCSBA") also filed comments on January 7, 2019. The Companies filed Reply Comments on January 28, 2019.

The Conservation Groups filed final comments on March 7, pursuant to the Commission's January 30, 2019 Order granting SCSBA's request for additional time to file final comments. SCSBA also filed comments on March 7.

On March 28, Duke Energy filed supplemental reply comments. In those comments, Duke Energy newly proposed that it be allowed to own GSA facilities.[1] It acknowledged that it "did not raise this issue specifically" in its application, that "this detail of the Programs has not been previously raised, and that other parties may want the opportunity to comment on this clarification."[2]

On April 3, SCSBA requested that the Commission allow thirty days from the date of the request to respond to the new issue that Duke Energy raised.

On April 17, the Commission granted SCSBA's request, and on April 19 it clarified that the tolling period began on the date that the April 17 order was issued, making the comment deadline May 17.

SACE promotes responsible energy choices to ensure clean, safe and healthy communities throughout the Southeast. CCL is a nonprofit organization whose mission is to protect the natural environment of the South Carolina coastal plain and to enhance the quality of life in their communities by working with individuals, businesses and government to ensure balanced solutions. The Conservation Groups support expanding the proportion of electricity generation produced by renewable energy resources and seek to ensure that the GSA Program is successful. The Conservation Groups believe that setting a level playing field and enabling third-party developed renewable energy projects

[1] *Supplemental Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC* 11-12 (Mar. 28, 2019).
[2] *Id.*

will ultimately lead to a more successful program and comports with the intent of the legislature in enacting the Energy Freedom Act, H3659.

In these Supplemental Comments, the Conservation Groups explain that Duke Energy's proposal (1) would be a substantial change in the program and was not anticipated in Duke Energy's GSA application or otherwise; (2) would cause problems with this State's GSA Program, much as it has done in North Carolina; and (3) would not conform to recently enacted South Carolina law.

Duke Energy's new proposal to own GSA facilities does not "clarify" its earlier filings, but appears to result instead from the North Carolina Utilities Commission's ("NCUC") decision to permit it to own GSA facilities in that state. Duke Energy's South Carolina application anticipated that the GSA facility suppliers would be non-Duke entities.[3] Duke Energy's application proposed to recover the cost of purchased power under its fuel rates,[4] but if Duke Energy is permitted to own GSA facilities and recovers its costs in this way, it could potentially recover its costs twice over, being paid for electricity from its GSA facilities once by the GSA customer and then again through its fuel rate. And Duke Energy's application anticipates charging administrative charges, but does not address those charges in the context of GSA facilities that Duke Energy owns. While waiving administrative charges for GSA customers would give Duke

[3] *Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Establish Green Source Advantage Programs and Riders GSA* 9 (Oct. 10, 2018) (explaining that "DEC or DEP, as applicable, will enter into a GSA PPA to purchase generation from the Renewable Supplier," which would not be necessary between the utility and itself).

[4] *Id.* at 10 ("South Carolina's allocable share of the cost of the renewable capacity and energy purchased under the GSA Programs would be recovered as a part of the Companies' fuel rates pursuant to S.C. Code Ann. § 58-27-865(2)(c), as the Renewable Supplier would be a Qualifying Facility under the Public Utility Regulatory Policies Act of 1978, also known as PURPA.").

Energy an unfair competitive advantage over third-party renewable developers, it also is not clear why Duke Energy should charge administrative fees for administering its own facilities, nor who would pay those fees—if the fees are recovered through Duke Energy's base rates, then its retail customers would seem to be subsidizing its GSA facilities.

Duke Energy's proposal to own GSA facilities was not fully developed before this Commission, and was similarly undeveloped before the NCUC, because Duke Energy arguably buried its proposal to participate as a GSA facility developer in a footnote in its initial NC program filing.[5] The proposal has already caused a backlash in North Carolina, and has prompted a motion for reconsideration of the NCUC's order approving the program and requiring a compliance filing. That motion, filed by the North Carolina Clean Energy Business Alliance ("NCCEBA"), asks the NCUC to reconsider its decision to guarantee at the outset that Duke Energy will be able to add its GSA facilities to its rate base after its contact with the GSA customer ends. In short, guaranteeing that Duke Energy will be able to rate-base these facilities guarantees it future income from the facilities, reducing its financial risk at the outset compared to third-party developers, thereby allowing it artificially to reduce up-front costs and giving it an unfair advantage.

Similar concerns are likely to arise if Duke Energy is allowed to own GSA facilities in South Carolina. These problems stem from Duke Energy's position as the incumbent utility. For example, the variable bill credit established in the GSA Program favors Duke Energy because it is calculated at the day-ahead real-time hourly rate, and

[5] NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2*, at 7 n.4.

Duke Energy has the most direct access to this information, positioning it to have an advantage in estimating the maximum cost at which a new renewable energy facility will be economical, i.e., at which its levelized cost of energy will be below the utility's day-ahead real-time hourly avoided production cost.[6] Duke Energy also has easier access to information on system impacts and may use this information to aid in project development and streamline study processes for its own facilities to the disadvantage of third party developers.[7]

Finally, Duke Energy's proposal is inconsistent with recently enacted South Carolina law. South Carolina's new clean-energy legislation, H3659, known as the Energy Freedom Act, provides that utilities may use programs currently on file with the Commission to comply with the law's requirements for voluntary renewable energy programs, so long as the Commission determines that the program conforms with the law. Section 58-41-30(F). To the extent that Duke Energy intends its GSA Program to satisfy H3659, the law does not anticipate Duke Energy owning GSA facilities. It defines "Renewable energy contract" as between "an electrical utility and a renewable energy supplier." Section 58-41-10(11); *see also* Section 58-41-20(F)(1) ("Electrical utilities, subject to approval of the commission, shall offer to enter into fixed price power purchase agreements with small power producers for the purchase of energy and capacity at avoided cost"). But Duke Energy would have no need to contract with itself, if it is on both sides of the deal. If the General Assembly meant for Duke Energy to participate, it

[6] Theoretically, a GSA customer might contract with a GSA facility developer at something higher than avoided cost; however, we assume that most potential GSA customers will seek to save money through the program if possible.

[7] *See* NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Green Source Advantage Program Compliance Filing* 12 (Mar. 18, 2019).

would have so provided. Furthermore, H3659 defines "Renewable energy supplier" as "the owner or operator of a renewable energy facility, including the affiliate of an electrical utility that contracts with a participating customer." Section 58-41-10(13). The General Assembly could have included "utility" in this definition, but instead opted to include only utility *affiliates*.

The statute also provides that "the participating customer shall have the right to select the renewable energy facility *and negotiate with the renewable energy supplier on the price to be paid* by the participating customer for the energy, capacity, and environmental attributes of the renewable energy facility and the term of such agreement. . ." 58-41-30(A)(1). The price negotiation contemplated in this statute makes sense if it is interpreted to mean a negotiation between a large commercial customer and a renewable energy developer, but not between the customer and the utility. Utility charges for energy, capacity, and environmental attributes sold to a customer are typically established by Commission-approved rates, not by individual negotiation. The statute is designed to allow customers to negotiate renewable energy prices and terms that flow through the utility to the customer, not to establish a new relationship in which the utility supplies both negotiated energy price and avoided cost credits, each flowing from the utility. The utility has multiple alternative avenues to help customers access renewable energy, but this particular statutory pathway is intended to enable negotiation with independent developers.

More broadly, the new statute explicitly requires what is already a general tenet of public utility law: "The commission is directed to address all renewable energy issues in a fair and balanced manner . . . ." Section 58-41-05. It cannot be fair and balanced, as

between the incumbent utility and a renewable energy project developer, for the utility to contract with itself on terms it devised, and based on market information known only to itself.

For the foregoing reasons, the Conservation Groups oppose Duke Energy's proposal to own GSA facilities. Now and over the coming years, the Commission will implement various provisions within the new Energy Freedom Act. It is particularly important in this initial implementation to hew to its statutory purposes, intent, and explicit directives, which include "Freedom" in contracting for independently supplied energy (whether at the rooftop, commercial, or utility-scale level, under the various provisions of the Act). If, however, the Commission decides that the new voluntary commercial renewable energy access provisions do allow Duke Energy to be a supplier, it should first require Duke Energy to submit for comment by all parties an amended filing, including identification of potential areas of anti-competitive advantage and proposed guardrails to level the playing field.

Respectfully submitted this 17th day of May, 2019.

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